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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,110	04/14/2004	Kenneth D. Eisenbraun	KDE-23702/03	6162

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EXAMINER
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STERLING, AMY JO

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/824,110	<b>Applicant(s)</b> EISENBRAUN, KENNETH D.	
	<b>Examiner</b> Amy J. Sterling	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the **Final Office Action** for application number 10/824,110 Merchandising hanger, filed on 4/14/04. Claims 1-18 are pending. This **Final Office Action** is in response to applicant's reply dated 4/3/06. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

### ***Claim Objections***

Claim 3 is objected to because of the following informalities:

Claim 3 recites, "an opening" and claim 1 had already recited "an opening" and it is confusing if these are the same opening. The "opening" of claim 3 should be designated as a "second" opening for clarification.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

Claims 1, 2, 4, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 4664432 to Swift et al.

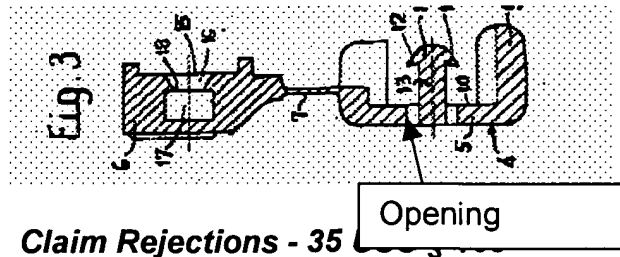
The patent to Swift et al. ('432) discloses a single piece hanger (10) molded of a plastic material (See Col. 1, line 25 for material) having a planar surface (30) with an opening (in between 32) having a top and a base, a tab (16) extending from the base of

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the surface, the tab having a stud (24, 28, 26) with a body (24, 28) and a hemispherical conical cap (26), the stud with an enlarged end, the stud which is integral with one of the first portion (14) and an aperture (20) having a flange divided into a plurality of flange portions (22) and which is formed intermediate the thickness and extends into the aperture therein through a third tab portion (12), the first tab portion having a first tab portion thickness, the third tab portion having a third tab portion thickness and an intermediate between the first and third tab portions is a second tab portion (18) having a second tab thickness which is less than the first tab portion thickness.

Claims 1, 3 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 3708835 to Bienz.

The patent to Bienz teaches a hanger (See Figure 3) having a planar surface (20) having a top and a base and an opening (3) which could be used to suspend the hanger, if so desired, a tab (4) extending from the base having a stud (13) with an enlarged end, the stud which is integral with a third tab portion (5) and an aperture (15) having a flange (18) therein through the first tab portion (6), and a second tab portion (7) intermediate the first and third tab portions, wherein the second tab portion (7) has a thickness that is less than the first tab portion (6) and the first tab portion has a thickness that is greater than the third tab portion (5) and wherein there is an opening (See Drawing Below) adjacent the base of the stud in the third tab portion.



Claims 6 and 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4664432 to Swift et al. and in view of United States Patent No. 4811977 to Swift et al.

Swift et al. ('432) discloses the basic inventive concept with the exception that it does not disclose that the plastic material is specifically thermoplastic.

Swift et al. ('977) discloses a thermoplastic used for moldability of the material. (See Col. 2, line 43 for material). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a thermoplastic in order to be able to mold the plastic to the desired shape.

Swift et al. ('432) does not specifically teach that the ratio of first, second and third tab thicknesses are 1.5-3.5:1:1.3-2.5.

It would have been obvious to one of ordinary skill in the art to have made the tab of these dimensions, in order to support the device in the manner desired and to bend the tab in the desired location, the dimension being a design choice which would be obvious to optimize. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Swift et al. to have optimized the dimensions of the device including these thickness ratios.

Claims 8, 10-12, 14, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over 4664432 to Swift et al. as applied to claim 1 above.

Swift et al. ('432) teaches the basic inventive concept as shown above including a single piece hanger (10) molded of a thermoplastic material (See Col. 2, line 43 for material) having a planar surface (30) having a top and a base, a tab (16) extending from the base of the surface, the tab having a stud (24, 28, 29) with a body (29) and a hemispherical conical cap (24,28), the stud which is integral with one of the first portion (14) and an aperture (20) having a flange divided into a plurality of flange portions (22) therein through a third tab portion (12), the first tab portion having a first tab portion thickness, the third tab portion having a third tab portion thickness and an intermediate between the first and third tab portions is a second tab portion (18) having a second tab thickness which is less than the first tab portion thickness.

Swift et al. ('432) does not specifically teach that the ratio of first, second and third tab thicknesses are 1.5-3.5:1:1.3-2.5.

It would have been obvious to one of ordinary skill in the art to have made the tab of these dimensions, in order to support the device in the manner desired and to bend the tab in the desired location, the dimension being a design choice which would be obvious to optimize. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Swift et al. to have optimized the dimensions of the device including these thickness ratios.

Claims 10, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3708835 to Bienz.

The patent to Bienz teaches a hanger (See Figure 3) having a planar surface (20) having a top and a base, a tab (4) extending from the base having a stud (13) integral with a third tab portion (5) and an aperture (15) having a flange (18) therein through the first tab portion (6), and a second tab portion (7) intermediate the first and third tab portions, wherein the second tab portion (7) has a thickness that is less than the first tab portion (6) and the first tab portion has a thickness that is greater than the third tab portion (5) and wherein there is an opening (See Drawing Below) adjacent the base of the stud in the third tab portion.

Bienz does not specifically teach that the ratio of first, second and third tab thicknesses are 1.5-3.5:1:1.3-2.5.

It would have been obvious to one of ordinary skill in the art to have made the tab of these dimensions, in order to support the device in the manner desired and to bend the tab in the desired location, the dimension being a design choice which would be obvious to optimize. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Bienz to have optimized the dimensions of the device including these thickness ratios.

### ***Response to Arguments***

In response to applicant's argument that both the Swift et al. reference and the Beinz reference both are intended for a different purpose, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it

meets the claim. In both instances, the structure recited by the claims does not differ from the structure of the recited references.

The applicant has also argued that the ratios are not taught by the references and are significant for flexibility. This is unpersuasive in that although the exact ratios are not specifically taught, they are merely dimensions, which are a design choice and are not patentable.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can



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be reached at 571-272-6788. The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal communications only).

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

  
Amy J. Sterling

5/15/06

Primary Examiner